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Human Services, Centers for Medicare and Medicaid Services

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 PEREZ, WILLIAMS & MEDINA,) Case No. 01:05-CV-00403 DLB
11 A Law Partnership,)
12 Plaintiff,) **STIPULATION AND ORDER RE:**
13 v.) **DISBURSEMENT OF INTERPLED FUNDS**
14 MARIA ISABEL MARTINEZ,)
15 FRANCISCO MARTINEZ, SAINT)
16 AGNES HOSPITAL, CBCA HEALTH)
17 INSURANCE MEDI-CAL,)
18 HUGHES/LAWSON PHYSICAL)
19 THERAPY), UNITED STATES)
20 DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)
CENTERS for MEDICARE &)
MEDICAID SERVICES and DOES 2)
through 25,)
21 Defendants.)
22)
23)
24)
25)
26)
27)

21 The parties, by and through their undersigned counsel,
22 stipulate as follows:

23 WHEREAS, plaintiff Perez, Williams & Medina filed a "First
24 Amended Complaint in Interpleader" with the Fresno County
25 Superior Court on December 30, 2003, Case No. 03 CE CG 04607 DSB
26 ("the State Court Action"), after first depositing \$15,000 in
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1 interpled funds regarding this dispute with the Fresno County
2 Superior Court Clerk;

3 WHEREAS, defendant Michael O. Leavitt, Secretary of the
4 United States Department of Health and Human Services removed
5 this action to federal court on or about March 25, 2005; and

6 WHEREAS, the parties entered into a Settlement Agreement and
7 General Release ("Agreement and Release") of this action on or
8 about May 1, 2006, resulting in the complete resolution of this
9 dispute;

10 **THE PARTIES STIPULATE** and respectfully request this Court to
11 direct the Clerk of the Fresno County Superior Court, by way of
12 formal order, to disburse the interpled funds as set forth in
13 paragraphs 3.1(b) through 3.1(d) of the Agreement and Release.
14 The parties attach a true and correct executed copy of the
15 Agreement and Release to this Stipulation as Exhibit "A".

16 Respectfully submitted,

17 DATED: April 17, 2006

PEREZ, WILLIAMS & MEDINA
A Law Partnership

18 /s/Robert Gray Williams
19 ROBERT GRAY WILLIAMS, ESQ.
Attorney for Plaintiffs

20
21 DATED: April 28, 2006

S.A. HANSEN & ASSOCIATES
A Professional Law Corporation

22
23 /s/Stephen A. Hansen
24 STEPHEN A. HANSEN, ESQ.
25 Attorneys for
26 Defendant St. Agnes Hospital
27

1 DATED: April 28, 2006

McGREGOR W. SCOTT, ESQ.
United States Attorney

2
3 /s/Brian W. Enos
BRIAN W. ENOS, ESQ.
Assistant U.S. Attorney
Attorneys for Defendant U.S.
Dept. of Health & Human
5 Services, Centers for Medicare
6 & Medicaid Services

7
8 DATED: April 25, 2006

JEFFREY D. CLASON, ESQ.
Central California Legal Services

9
10 /s/Jeffrey D. Clason
JEFFREY D. CLASON, ESQ.
11 Attorneys for FRANCISCO MARTINEZ and
12 MARIA ISABEL MARTINEZ, Defendants

13 IT IS SO ORDERED.

14 Date: May 2, 2006

/s/ Dennis L. Beck

15 U.S. MAGISTRATE JUDGE
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SETTLEMENT AGREEMENT AND GENERAL RELEASE

1.0 PARTIES

The parties to this Settlement Agreement and General Release ("AGREEMENT AND RELEASE") comprise plaintiffs PEREZ, WILLIAMS & MEDINA, A Law Partnership ("LAW FIRM"), defendants FRANCISCO MARTINEZ and MARIA ISABEL MARTINEZ ("MARTINEZ"), defendant ST. AGNES HOSPITAL ("ST. AGNES") and defendant MICHAEL O. LEAVITT, SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ("SECRETARY"), collectively referred to as "RELEASING PARTIES".¹

2.0 RECITALS

This AGREEMENT AND RELEASE is made with reference to the following facts:

2.1 Certain disputes and controversies have arisen between parties to this AGREEMENT AND RELEASE. These disputes and controversies arose as a result of a dispute over payment of \$15,000.00 in settlement proceeds the LAW FIRM obtained pursuant to representing MARTINEZ in a prior lawsuit. These proceeds were deposited by the LAW FIRM to the Fresno County Superior Court upon the commencement of their interpleader action, whose operative pleading was filed with the Fresno County Superior Court on or about December 30, 2003. This interpleader action was removed to the United States District Court, Eastern District

¹ The RELEASING PARTIES recognize that former defendants CBCA Health Insurance Medi-Cal and Hughes/Lawson Physical Therapy ("DEFAULTED DEFENDANTS") are no longer parties to this action. The Court entered a default judgment against each of the DEFAULTED DEFENDANTS on March 23, 2006. As such, neither of the DEFAULTED DEFENDANTS are parties to this AGREEMENT AND RELEASE.

1 of California by the SECRETARY on or about March 25, 2005, and
2 captioned as follows:

3 PEREZ, WILLIAMS & MEDINA, A Law Partnership v. MARIA ISABEL
4 MARTINEZ, et al., Case No. 1:05-cv-00403 DLB ("the PEREZ,
5 WILLIAMS & MEDINA lawsuit").
6

7 2.2 The RELEASING PARTIES intend this AGREEMENT AND RELEASE
8 to settle and dispose of, fully and completely, any and all
9 claims, demands, and causes of action whether known or unknown,
10 suspected or unsuspected, heretofore or hereafter arising out of,
11 connected with, or incidental to the PEREZ, WILLIAMS & MEDINA
12 lawsuit up to the date all of the parties sign this AGREEMENT AND
13 RELEASE, and it is further the intention of the parties that the
14 AGREEMENT AND RELEASE shall be binding upon any and all former,
15 present or future assignees, parents, affiliates, subsidiaries,
16 divisions, insurance carriers, subdivisions, holdings, assets,
17 officers, directors, shareholders, general partners, limited
18 partners, successors, agents, employees and attorneys of the
19 parties, and each of them.

20 2.3 The RELEASING PARTIES acknowledge and agree that they
21 are entering into this AGREEMENT AND RELEASE, and settling the
22 PEREZ, WILLIAMS & MEDINA lawsuit, in an effort to avoid the
23 expense and inconvenience of litigation, and that the
24 consideration which each is giving the other does not constitute
25 and shall not be construed as an admission, acknowledgment or
26 representation concerning any liability.
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1 **3.0 AGREEMENT**

2 3.1 In consideration for the promises, warranties, and
3 releases contained in this AGREEMENT AND RELEASE, the parties
4 agree as follows:
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6 3.1(a) Upon execution of this AGREEMENT AND RELEASE,
7 the RELEASING PARTIES agree to promptly execute and file a
8 Stipulation requesting the Court to direct, by way of formal
9 order, the Clerk of the Fresno County Superior Court to disburse
10 the \$15,000 in settlement proceeds as set forth in paragraphs
11 3.1(b) through 3.1(d) of this AGREEMENT AND RELEASE.

12 3.1(b) The Fresno County Superior Court, as holder
13 of the above-referenced interpled funds, will disburse the sum of
14 three thousand, seven hundred and ninety-nine and 07/100 Dollars
15 (\$3,799.07) to the SECRETARY, as the full and final settlement of
16 the SECRETARY's claim. This disbursement shall be made payable
17 to: "MEDICARE - U.S. DEPT. OF HEALTH & HUMAN SERVICES" and
18 delivered to Assistant U.S. Attorney Brian W. Enos, located at
19 2500 Tulare St., Suite 4-401, Fresno, Ca 93721, for ultimate
20 delivery to the SECRETARY. The Fresno County Superior Court is
21 asked to specifically identify on the check that payment is being
22 made on the behalf of "MARIA ISABEL MARTINEZ, 558-78-5139A, Date
23 of Loss: 1-14-2000." Mr. Enos will forward the check to the
24 Secretary.
25

26 3.1(c) The Fresno County Superior Court, as holder
27 of the above-referenced interpled funds, will disburse the sum of
28 two thousand eighty nine and 69/100 Dollars to the ST. AGNES, as

1 the full and final settlement of ST. AGNES's claim. This
2 disbursement shall be made payable to: "ST. AGNES HOSPITAL" and
3 delivered to Stephen A. Hansen, Esq. of S.A. Hansen & Associates,
4 located at 6700 N. First St., Ste. 138, Fresno, Ca 93710 for
5 ultimate delivery to ST. AGNES. The Fresno County Superior Court
6 is asked to specifically identify on the check that payment is
7 being made pursuant to the RELEASING PARTIES settling the above-
8 captioned lawsuit.

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10 3.1(d) The Fresno County Superior Court, as holder
11 of the above-referenced interpled funds, will disburse the sum of
12 the balance of the interpled funds, or (nine thousand one hundred
13 eleven and 24/100 Dollars (\$9,111.24) to MARTINEZ, as the full
14 and final settlement of MARTINEZ's claim. This disbursement
15 shall be made payable to: "MARIA ISABEL MARTINEZ" and delivered
16 to Jeffrey Clason, Esq., located at Central California Legal
17 Services, Inc., 1999 Tuolumne St., Ste. 700, Fresno, Ca 93721 for
18 ultimate delivery to MARTINEZ. The Fresno County Superior Court
19 is asked to specifically identify on the check that payment is
20 being made pursuant to the RELEASING PARTIES settling the above-
21 captioned lawsuit.

22 3.1(e) The LAW FIRM, MARTINEZ, ST. AGNES and the
23 SECRETARY agree to stipulate to a dismissal of the PEREZ,
24 WILLIAMS, & MEDINA lawsuit in exchange for the mutual releases
25 agreed to herein, and said stipulation and ultimate dismissal
26 shall be filed with the Court within ten (10) business days of
27 the complete execution of the AGREEMENT AND RELEASE by all
28 parties.

1 **4.0 RELEASES**

2 4.1 The RELEASING PARTIES hereby releases and forever
3 discharges each other releasing party and their former, present
4 and future parents, affiliates, subsidiaries, divisions,
5 insurance carriers, subdivisions, holdings, assets, officers,
6 directors, shareholders, general partners, limited partners,
7 successors, agents, employees, and attorneys, of and from any and
8 all claims, demands, damages, debts, liabilities, accounts,
9 obligations, costs, expenses, actions, and causes of action of
10 every kind whatsoever, whether now known or unknown, suspected or
11 unsuspected, which the releasing parties have, own or hold, or at
12 any time heretofore ever had, owned or held arising out of,
13 connected with, or incidental to all dealings, up to the date
14 these parties sign this AGREEMENT AND RELEASE, between the
15 parties referred to in this AGREEMENT AND RELEASE, including but
16 not limited to, the matters asserted in, or relating to, the
17 PEREZ, WILLIAMS, & MEDINA lawsuit .
18

19 **5.0 REPRESENTATIONS AND WARRANTIES**

20 The parties to this AGREEMENT AND RELEASE represent,
21 warrant, and agree as follows:
22

23 5.1 **ENTIRE AGREEMENT**

24 This AGREEMENT AND RELEASE is the entire agreement between
25 and among the parties and supersedes all prior and
26 contemporaneous agreements or understandings of the parties. Any
27 amendment to this AGREEMENT AND RELEASE shall not be valid or
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1 binding unless in writing, executed by each of the parties
2 hereto.

3
4 5.2 **SUCCESSOR-IN-INTEREST**

5 This AGREEMENT AND RELEASE, including the releases herein
6 contained, shall be binding upon and inure to the benefit of each
7 of the parties hereto and each of their successors-in-interest,
8 including heirs and assigns.

9
10 5.3 **APPLICABLE LAW**

11 All questions with respect to the construction of this
12 AGREEMENT AND RELEASE and the rights and liabilities of the
13 parties hereto shall be governed by the applicable Federal laws.

14 5.4 **AUTHORITY**

15 Each signatory to this AGREEMENT AND RELEASE warrants that
16 it has full authority to reach this agreement with regard to all
17 of the claims, both general and specific, stated herein.
18

19 5.5 **COUNTERPARTS**

20 This AGREEMENT AND RELEASE may be executed in counterparts,
21 each of which shall be deemed an original, and all of which taken
22 together shall constitute one and the same AGREEMENT AND RELEASE.
23 The parties hereto, and each of them, express and understand and
24 agree and warrant and represent to each other that the terms and
25 conditions of this AGREEMENT AND RELEASE shall not be effective
26 to release any party hereto from any and all of the matters
27 referred to in this AGREEMENT AND RELEASE unless and until such
28

1 particular party executes a counterpart of this AGREEMENT AND
2 RELEASE.

3
4 5.6 **EXPENSES**

5 Each party hereto shall bear its own costs, attorney's fees
6 and expenses in connection with the PEREZ, WILLIAMS, & MEDINA
7 lawsuit, this AGREEMENT AND RELEASE, and all matters and claims
8 pertaining thereto.

9
10 5.7 **ATTORNEY'S FEES**

11 In the event any action, suit or other proceeding is
12 commenced under or in connection with this AGREEMENT AND RELEASE,
13 the prevailing party therein shall be entitled to recover, and
14 the other party agrees to pay, the prevailing party's costs and
15 expenses in connection therewith, including attorney's fees and
16 costs actually incurred; provided, however, that the parties
17 specifically acknowledge and agree that the provisions of this
18 paragraph are not applicable to or binding upon the SECRETARY to
19 the extent it contravenes Federal law, and that any such
20 prevailing party's costs and expenses, including attorney's fees
21 and costs as against the SECRETARY shall be paid only if, when
22 and as applicable Federal law may permit.

23
24 5.8 **DRAFTER OF AGREEMENT AND RELEASE**

25 All parties participated in the drafting of this AGREEMENT
26 AND RELEASE. In addition, none of the parties hereto or the
27 parties' respective counsel shall be deemed the drafter of the
28

1 AGREEMENT AND RELEASE in any litigation or other proceeding which
2 hereafter may arise between or among them, or any of them.

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4 5.9 JURISDICTION

5 The RELEASING PARTIES agree that the United States District
6 Court, Eastern District of California shall retain jurisdiction
7 over the enforcement of this AGREEMENT AND RELEASE.

8 WHEREFORE, the parties have executed this AGREEMENT AND
9 RELEASE, as of the date next to their signatures, and the same is
10 approved as to form by their counsel.

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13 ///

14 DATED: April 17, 2006

PEREZ, WILLIAMS & MEDINA
A Law Partnership

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17 

18 ROBERT GRAY WILLIAMS, ESQ.
19 Attorney for Plaintiffs

20
21 DATED: April __, 2006

S.A. HANSEN & ASSOCIATES
A Professional Law Corporation

22
23
24 STEPHEN A. HANSEN, ESQ.
25 Attorneys for
26 Defendant St. Agnes Hospital
27
28

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DATED: April __, 2006

PEREZ, WILLIAMS & MEDINA
A Law Partnership

ROBERT GRAY WILLIAMS, ESQ.
Attorney for Plaintiffs

DATED: April 28, 2006

S.A. HANSEN & ASSOCIATES
A Professional Law Corporation


STEPHEN A. HANSEN, ESQ.

Attorneys for

Defendant St. Agnes Hospital

DATED: April __, 2006

MCGREGOR W. SCOTT, ESQ.
United States Attorney

Assistant U.S. Attorney

& Medicaid Services

BRIAN W. ENOS, ESQ.

Attorneys for Defendant U.S.
Dept. of Health & Human
Services, Centers for Medicare

DATED: April __, 2006

JEFFREY D. CLASON, ESQ.
Central California Legal Services

JEFFREY D. CLASON, ESQ.
Attorneys for FRANCISCO MARTINEZ and
MARIA ISABEL MARTINEZ, Defendants

1 DATED: April 28, 2006

McGREGOR W. SCOTT, ESQ.
United States Attorney

3 Brian W. Enos

4 BRIAN W. ENOS, ESQ.
5 Assistant U.S. Attorney
6 Attorneys for Defendant U.S.
7 Dept. of Health & Human
8 Services, Centers for Medicare
9 & Medicaid Services

10 DATED: April __, 2006

JEFFREY D. CLASON, ESQ.
Central California Legal Services

11 JEFFREY D. CLASON, ESQ.
12 Attorneys for FRANCISCO MARTINEZ and
13 MARIA ISABEL MARTINEZ, Defendants
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1 DATED: April __, 2006

McGREGOR W. SCOTT, ESQ.
United States Attorney

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3
4 BRIAN W. ENOS, ESQ.
Assistant U.S. Attorney
Attorneys for Defendant U.S.
5 Dept. of Health & Human
6 Services, Centers for Medicare
& Medicaid Services

7
8 DATED: April 25, 2006

JEFFREY D. CLASON, ESQ.
Central California Legal Services

9
10
11 By: JDL
JEFFREY D. CLASON, ESQ.
Attorneys for FRANCISCO MARTINEZ and
12 MARIA ISABEL MARTINEZ, Defendants
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